



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 4, 2011

Mr. B. Chase Griffith
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2011-06075

Dear Mr. Griffith:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 416352 (ORR# 10-3439).

The McKinney Police Department (the "department"), which you represent, received a request for all arrest records regarding a named individual, as well as the records for two specified arrests. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the present request is for arrest records regarding the named individual. Records that do not involve this individual as an arrestee are not responsive to the request for information. This decision does not address the public availability of any information that is not responsive to the request, and the department is not required to release this information in response to the request.

Next, you have not submitted information responsive to the request for records pertaining to the specified arrest that occurred in Collin County. To the extent the department maintains information responsive to this portion of the request that existed on the date the request was received, we assume you have released it. If you have not released any such information, you must do so at this time. Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex.1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. The present request, in part, requires the department to compile unspecified law enforcement records concerning the named individual. We find this portion of the request implicates this individual's right to privacy. You have submitted the arrest and incident reports for case number 10-002154. Because these reports concern an arrest specified in the request, they are not part of a compilation of the individual's criminal history. Thus, the department may not withhold the records for case number 10-002154 in their entirety under section 552.101 of the Government Code in conjunction with common-law privacy. We note you have submitted the arrest report for arrest number 22283, which reflects that the named individual was taken into custody for a non-criminal offense. Accordingly, we find this report is also not part of a criminal history compilation that is protected in its entirety by common-law privacy. However, to the extent the department maintains other law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 in conjunction with common-law privacy.

You also assert that records for case number 10-002154 and arrest number 22283 contain information that is protected under common-law privacy. The type of information considered highly intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has also found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We have marked medical information that is not of legitimate public interest. We have also marked other information that is highly intimate or embarrassing and is of no legitimate public interest. Accordingly, the department

must withhold the marked information in case number 10-002154 and arrest number 22283 under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information in these reports must be released.

In summary, the information marked in case number 10-002154 and arrest number 22283 must be withheld under section 552.101 in conjunction with common-law privacy. The remaining information in these reports must be released. To the extent the department maintains other law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/eeg

Ref: ID# 416352

Enc. Submitted documents

c: Requestor
(w/o enclosures)